



California Regional Water Quality Control Board

Santa Ana Region



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November 1, 2007

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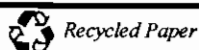
CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR PROPOSED CEMEX CREEK LEVEE REPAIR, SAN BERNARDINO COUNTY (ACOE REFERENCE NO. SPF – 2006 – 1460)

Dear Ms. Jones:

On December 5, 2006, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the proposed CEMEX Levee repair along Lytle Creek in San Bernardino County. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description: CEMEX proposes to repair two segments of an earthen levee along Lytle Creek that were damaged during 2005 seasonal storm events. The levee protected an adjacent 58-acre sand and gravel quarry/mining pit that had been excavated to a depth approximately 60-feet below the adjacent streambed. The stream flow broke through the transverse levee at the upstream end of the quarry and filled the pit with sediment carried in with the Creek's bed-load. An adjacent segment of the levee along the east side of the quarry, joining the transverse levee, experienced significant erosion. The levee segments will be reconstructed with earth within the footprint of the damaged levee. The repairs to the breached transverse levee will include grouted rip-rap and/or soil-cement on the embankment. The eroded adjacent levee will have loose rock rip-rap placed on the embankment; this revetment will be toed in a minimum of 6-feet. The project is located within Section 16 of Township 1

California Environmental Protection Agency



North, Range 5 West, of the U.S. Geological Survey *Devore, California*, 7.5-minute topographic quadrangle map (34 deg. 10 min. 09 sec. N/ -117 deg. 24 min. 00 sec. W).

Receiving water: Lytle Creek

Fill area: 1.84 acres of permanent impact to an ephemeral wash under existing conditions and 0.11 acres of permanent impact under pre-failure conditions (2,000 linear feet).

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 3

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The mitigation is based on impacts to Lytle Creek as the site existed *prior* to the levee failure. The proposed mitigation is summarized below:

- 0.22 acres of waters of the U.S. will be created or 0.385 acres of waters of the U.S. will be enhanced. The mitigation effort will proceed according to a mitigation plan approved by the U.S. Army Corps of Engineers.
- Site-specific best management practices (BMPs) will be specified in the site's Storm Water Pollution Prevention Plan (SWPPP).

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State. This project is more than one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is required, as is development of a Storm Water Pollution Prevention Plan (SWPPP), to control the discharge of pollutants from the project site.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. The Executive Officer has determined that the proposed project is exempt from provisions of the California Environmental Quality Act (CEQA), according to Guidelines

Section 15301 and 15302 for repair of existing facilities and replacement or reconstruction of existing structures, respectively.

This 401 Certification is contingent upon the execution of the following conditions:

1. The discharger shall compensate for impacts to Lytle Creek through the creation of 0.22 acres of waters of the U.S. or the enhancement of 0.385 acres of waters of the U.S. Either mitigation effort shall occur in the Devore area of San Bernardino County and shall be initiated by October 15, 2008. The discharger may directly undertake the mitigation effort or pay an in-lieu fee to the Santa Ana Watershed Association (or any of its member organizations) or to any other in-lieu fee program, or a mitigation bank, subject to approval by the Corps.
2. In the event that the discharger elects to directly undertake the mitigation effort, the discharger shall provide a copy of the final mitigation plan to Regional Board staff upon its approval by the U.S. Army Corps of Engineers.
3. In the event that the discharger elects to pay an in-lieu fee to the Santa Ana Watershed Association (or any of its member organizations) or to any other in-lieu fee program, or a mitigation bank, approved by the Corps, to implement the proposed mitigation on behalf of the discharger, any fees paid shall include funding for a minimum of 6-years of follow-on maintenance. The discharger shall provide evidence of the payment to the Executive Officer by February 1, 2008.
4. The levee failure has resulted in a substantial lowering of the streambed profile at the location where stream flow and the accompanying bed- and suspended sediment loads were diverted into the mining pit. This localized depression in the streambed profile has the potential to interrupt the transport of sediment in the wash and result in its degradation. In order to mitigate this potential impact, the discharger shall implement an effective monitoring program during the rain season (October 15th to April 15th) following construction, for the purposes of assuring that subsequent significant storm events result in the restoration of the streambed profile to a condition similar to that which existed prior to the levee failure. Monitoring may be discontinued upon demonstration that the streambed profile has been restored. The monitoring program shall include, at a minimum:
 - a. Documentation of the streambed profile depression, and 1,000-linear feet upstream and 2,000-linear feet downstream of the depression, upon completion of the levee repair.
 - b. Documentation of the streambed profile depression, and 1,000-linear feet upstream and 2,000-linear feet downstream of the depression, following each significant flow event within the stream during the monitoring period.
5. All streambed profile monitoring documentation shall be provided to Regional Board staff by June 17, 2008.



Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure

compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Gerry Salas
State Water Resources Control Board, OCC – Erik Spiess
State Water Resources Control Board, DWQ-Water Quality Certification
Unit – Bill Orme
California Department of Fish and Game – Jeff Brandt
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric
Raffini and David Smith